

Owen Lee Floor Service, Inc., and Owen Lee, Contractor, an Individual Proprietorship and Carpenters and Linoleum Layers Local No. 484, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 8-CA-12358

April 29, 1982

## SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER

On July 17, 1980, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in the above-entitled proceeding in which the Board, *inter alia*, ordered Respondent to make whole certain discriminatees and employee benefit funds for losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act. On June 4, 1981, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order, including its backpay provisions. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 8, on August 31, 1981, issued and duly served on Respondent a backpay specification and notice of hearing, alleging the amount of backpay and employee benefit fund contributions due under the Board's Order and notifying Respondent that it should file a timely answer complying with the Board's Rules and Regulations, Series 8, as amended. Respondent failed to file such an answer.

Thereafter, on January 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 28, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

\* \* \* \* \*

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on Respondent on or about August 31, 1981, specifically states that Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 8 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them. By a telephone call on January 8, 1982, Respondent's attorney's office was informed that it had failed to file answers to the backpay specification as required by Section 102.54 of the Board's Rules and Regulations and that, unless answers were filed by January 13, 1982, counsel for the General Counsel would file a Motion for Summary Judgment with the Board. A letter confirming this telephone conversation was sent to Respondent's attorney on January 8, 1982.

On January 13, 1982, Respondent's attorney telephonically advised counsel for the General Counsel that the allegations in the backpay specification were reasonably accurate and consequently he would file no answer and not litigate this matter. Respondent has filed no answer. Respondent also failed to file a response to the Notice To Show Cause. Therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As Respondent has not filed an answer to the specification and has not offered any explanation for its failure to do so, in accordance with the rule set forth above, the allegations of the specification are deemed to be true and are so found by the Board without the taking of evidence in support of the said allegations.

Accordingly, we grant the General Counsel's Motion for Summary Judgment and conclude the net backpay due each of the discriminatees and the amounts due the specified employee benefit funds

<sup>1</sup> 250 NLRB 651.

are as stated in the computations of the specification.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Owen Lee Floor Service, Inc., and Owen Lee, Contractor, an Individual Proprietorship, Bowerstown, Ohio, its officers, agents, successors, and assigns, shall make whole each of the discriminatees named below by payment to each of them of the amount specified as net backpay, with interest thereon,<sup>2</sup> computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977), until payment of all backpay due is made as provided for in *F. W. Woolworth Company*, 90 NLRB 289 (1950), less tax withholding required by Federal and state laws:

<sup>2</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins would award interest on the backpay owed the discriminatees on the basis of the position set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

Donald Beacham	\$14,284.62
Richard Castro	11,132.12
Donald Dugam	5,633.53
Anthony	
Guargliardo	
(To the Estate	
of)	6,574.49
Ernest Fletcher	6,992.95
Robert Ross	6,972.46
Clem Simon	9,651.63

IT IS FURTHER ORDERED that Respondent shall reimburse Carpenters and Linoleum Layers Local No. 484, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, for the loss of all pension fund and health and welfare fund payments incurred by the Union by payment to such funds of the amounts specified below:

Pension Fund	\$11,855.01
Health and	
Welfare Fund	9,220.56